Supreme Court, U.S.
FILED

No. 011530 APR - 9 2002

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IN THE SUPREME COURT OF THE UNITED STATES

L.C., A MINOR

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition for Writ of Certiorari
to the Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was it a violation of the protections conferred by the Fourth Amendment to the United States Constitution, as interpreted by ***Terry v. Ohio***, 392 U.S. 1 (1968) and its progeny, for the Pennsylvania Superior Court to affirm the lower court's denial of L.C.'s motion to suppress evidence where there was no legal basis for the police officer either to stop L.C. or to frisk him?

2. Was it a violation of the protections conferred by the Fourth Amendment to the United States Constitution, as interpreted by ***Terry v. Ohio***, 392 U.S. 1 (1968) and its progeny, for the Pennsylvania Superior Court to affirm the lower court's application of the plain view doctrine where the police officer had no legal right to be in a position to have the view but for an illegal stop and frisk?

LIST OF PARTIES

The names of all parties to the proceeding in the court for whose judgment review is sought here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

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Petitioner, L.C., respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of Pennsylvania.

OPINIONS BELOW

The Pennsylvania Supreme Court, Western District, issued an Order dated January 9, 2002, at 499 WAL 2001, which denied Petitioner's Petition for Allowance of Appeal. Said Order is reproduced herein at Appendix A. The Pennsylvania Superior Court, Western District, issued an Opinion and Order dated July 10, 2001, which affirmed the lower court's refusal to suppress evidence seized by the City of Erie, Bureau of Police. Said Opinion and Order is reproduced herein at Appendix B. The Court of Common Pleas for the Sixth Judicial District of Pennsylvania, issued an Opinion In Support of Order dated December 18, 2000, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), which requires the filing of a Statement of Matters Complained of on Appeal. Said Opinion is reproduced herein at Appendix C. The Court of Common Pleas, on October 31, 2000, issued an Order after a dispositional hearing wherein L.C. was adjudicated delinquent and placed in a residential drug treatment facility. Said Order is reproduced herein at Appendix D. On October 5, 2002, the Court of Common issued an Order, with attached Memorandum, denying the Petitioner's Motion to Suppress. It is reproduced herein at Appendix E. At Appendix F herein, Petitioner has reproduced the Findings, Conclusion and Recommendation of the Juvenile Court Master, the original trier of fact. On that Report is reproduced the Juvenile Court Judge's handwritten note denying the motion to suppress.

STATEMENT OF JURISDICTION

Jurisdiction is conferred upon this Court pursuant to Supreme Court Rule 10(c), 28 U.S.C. § 1257. On April 18, 2001, the Supreme Court of Pennsylvania denied L.C.'s Petition for Allowance of Appeal, thereby leaving extant the Opinion and Order of the Superior Court of Pennsylvania of July 3, 2000. The decision of the Superior Court decided an important federal question in a way that conflicts with relevant decisions of this Court. This Petition has been filed within 90 days of the Order of the Pennsylvania Supreme Court.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ."

STATEMENT OF THE CASE

On September 9, 2000, L.C. was arrested by officers of the Erie Bureau of Police and detained at the local juvenile detention center. He was charged with three allegations of violation of the Controlled Substance, Drug, Device and Cosmetics Act and one allegation of tampering with physical evidence.

At a combined suppression/adjudication hearing, Officer James Belak testified on direct examination that he and his partner, Officer Theodore Wisnieski, were driving in the area of the 2300 block on French Street at approximately 6:15 p.m. on the evening of September 9, 2000. They observed two males standing on the side of a wooden fence smoking "what appeared to be a marijuana cigar." They

stopped their vehicle when they noted the surprised expressions on the faces of the two males, John Pull and L.C.

Officer Belak testified that it appeared that Mr. Pull, who was holding the cigar, was about to pass it to L.C. When the officers stopped and exited their vehicle, they smelled the odor of burning marijuana. Mr. Pull approached the officers and handed the cigar to Officer Wisnieski. At the same time, Officer Belak was speaking with L.C. After getting his name and date of birth, Officer Belak said to L.C. "I'd like to pat you down for weapons for my safety." At that point, L.C. said he had nothing on him and offered to show the officer what was in his pocket. He put his hand in his right pants pocket, apparently inadvertently pulled out what appeared to be a cellophane bag of "crack" cocaine, and shoved the material back in his pocket.

Officer Belak informed L.C. that he had seen the bag and directed that it be turned over to him. L.C. placed his hand in his left pocket but was informed by Officer Belak that he was aware the bag was in the right pocket. He was again directed to turn the bag over. L.C. did not do so but instead ran from the officer. Officer Belak testified that, while chasing L.C., he observed him put his hand in his right pocket and then to his mouth and that L.C. appeared to be chewing. After the officer tackled and cuffed L.C., he observed a white gritty substance around L.C.'s mouth.

L.C. was transported to the police station and he was found to have in his possession $190.00 in currency of varying denominations, a bag of a leafy substance suspected to be marijuana, a cellophane bag containing two or three rocks of suspected "crack" cocaine, as well as a large rock of suspected "crack" cocaine. The suspected "crack" field-tested positive for cocaine. The State Police Laboratory tested all the suspect substances and the results identified the leafy substance as marijuana and the white rock-like substances as "crack" cocaine.

On cross-examination, Officer Belak testified that L.C. and Mr. Pull were standing turned slightly toward each other approximately two to three feet apart and some five to ten feet away from where the police car stopped. He further testified that Mr. Pull drew his attention by the manner in which he was holding the cigar between his fingers, which led the officer to believe it was a marijuana cigar and to decide to investigate further. However, Officer Belak admitted that he never saw L.C. with the "blunt" in his possession, never saw him smoke it, and never saw him so much as touch it at any time.

Officer Belak reiterated that as the officers exited their vehicle, Mr. Pull approached Officer Wisnieski and handed the cigar to him. L.C., however, remained where he had been standing when the officers arrived and did not approach Officer Belak, nor did he make any movement toward the officers. When asked if L.C. appeared to be armed, the officer replied that he did not know, but that was why he was searching him. He further stated that it was "routine" for an officer to search an individual for weapons when the officer spoke with that individual. He testified that during the pat down he felt something in L.C.'s front pants pocket but that it did not feel like a weapon. Lastly, Officer Belak testified that, no test of any kind was performed on the white grit he observed around L.C.'s mouth.

The Juvenile Court Master stated in his recommended findings of fact of October 5, 2000:

> Given the above scenario, as described by Officer Bielak [*sic*], the Master is compelled to agree with counsel for the defendant that no constitutionally acceptable reason existed to question [L.C.], or to tell him that he was about to be patted down. He had not been observed to commit a crime, he did not (initially) flee, he cooperated with the officer's request for name and address, and there was no reason to believe

> that he might be armed. The plain view doctrine is inapposite, inasmuch as the officer's announcement that he was about to conduct a pat-down search set in motion the train of events which led to his viewing the first baggy. The fact that [L.C.]'s companion was apparently smoking a marijuana cigarette cannot vitiate this defendant's constitutionally-protected right against unreasonable search, and for that reason the Master believes that the petition to suppress all evidence taken from L.C. should be granted.

The Juvenile Court, however, refused to confirm the recommendation and instead issued an Order denying the suppression motion on October 5, 2000. In a Memorandum attached to the Order, the court stated that up until the point L.C. ran from the police

> . . . it had not reached a stop-and-frisk, nor was the Defendant precluded from leaving the scene. It was his accidentally or inadvertently producing the contraband that lead to the police officer taking the actions he did.
>
> There was no constitutionally protected right that was violated at the time that Officer Bielak [*sic*] asked the questions of the Defendant particularly in light of the location where this took place; in a known drug dealing neighborhood and in light of the fact that the gentleman standing next to the Defendant appeared to be handing what was believed to be a marijuana cigar or blunt to the Defendant.

Counsel, in a Motion for Reconsideration, argued that L.C. was, in fact, seized at the time the officer approached him, inquired his name, and advised him that he was going to be patted down. Counsel further noted that the officer did not have a predicate upon which to believe that L.C. had committed a crime or to believe he was armed and dangerous. That being so, counsel argued, the stop was

illegal. The stop being illegal, counsel concurred with the Master that the suspected drugs were not in plain view, arguing that the doctrine does not apply where an officer has no lawful right to be in a position to have the view.

The Court granted the Motion to the extent it reviewed the transcript of the suppression hearing. After review of the transcripts, the court refused to modify its Order denying the suppression motion. At a dispositional hearing on October 31, 2000, the juvenile was adjudicated delinquent, in need of treatment, rehabilitation and supervision and committed to a drug and alcohol treatment facility for an indefinite period. However, the court did not sustain the allegation of tampering with physical evidence based on the fact that no test had been performed on the gritty substance around L.C.'s mouth.

In a Statement of Matters Complained of on Appeal filed pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), counsel reiterated the argument that there were no articulable facts to support a "stop and frisk" and that the plain view doctrine was inapplicable. The court, in its Opinion in Support of Order of December 18, 2000, concluded that the length of the detention, and the fact that he was neither transported against his will, nor subject to unreasonable investigatory methods, indicated that the stop of L.C. did not rise to the level of a custodial detention but remained an investigatory detention. The court further concluded that Officer Belak had the requisite reasonable suspicion to justify an investigatory stop, i.e., that criminal activity was afoot, stating

> Although Officer Belak could not speak with certainty as to whether the Appellant was smoking the marijuana cigar, his cognizance of the Appellant's suspicious behavior and his observance of illegal activity by the Appellant's companion combined with his detection of

> burning marijuana and the fact that this was a high crime area known for drug activity, provided him with the requisite reasonable suspicion necessary to conduct an investigatory stop of the Appellant. ***In the Interest of S.J.***, 713 A.2d 45 (Pa. 1998).

On this basis the court concluded that the stop was legal and addressed the issue of whether a frisk occurred.

The court concluded that officer Belak performed no frisk but that, before the pat down commenced, L.C. voluntarily revealed the contents of his pockets. He, thus, placed the crack cocaine within the officer's plain view. The court equated this situation with the situation in which an Appellant would have made a voluntary statement. However, the court concluded, even if the officer had frisked the L.C. there would have been "sufficient particular information known to him to satisfy the reasonable suspicion requirement." ***In the Interest of S.J.***, 713 A.2d at 49 (dissenting opinion).

REASONS FOR GRANTING THE WRIT

The reasons set forth herein are hereby submitted to be so important that a Writ of Certiorari should be granted. As the Memorandum Opinion of the Pennsylvania Superior Court illustrates, the panel rendered a decision that is, not only not in accord with applicable decisions of the United States Supreme Court, but also decided an important federal question in a way that conflicts with relevant decisions of this Honorable Court. Thus, the instant case is so important and worthy of review that the need for a writ of certiorari transcends the simple fact that the panel that ruled on July 10, 2001 erred. Absent reversal, the ruling of the panel could lead to a dilution of the constitutional protections afforded to a person seized at an investigatory stop, stemming from the Fourth Amendment of the United States Constitution as

interpreted by this Court in ***Terry v. Ohio***, 392 U.S. 1 (1968) and its progeny.

Under ***Terry***, a stop occurs when an individual is detained by the police by means of physical force or by a show of authority [392 U.S. at 19, n. 16], such that a reasonable person would believe he were not free to leave. The belief that one is not free to leave may be created by, among other things, physical touching, language or tone of voice. ***United States v. Mendenhall***, 446 U.S. 544, 554 (1980). Petitioner believes and avers that there can be no question that a stop occurred in the instant case, given the facts as set forth herein. Having said that, the question becomes whether the stop was valid.

In its Memorandum Opinion, the panel has correctly stated that under ***Terry*** and ***Commonwealth v. Hicks***, 434 Pa. 153, 253 A.2d 276 (1969) an officer may seize an individual and conduct an investigatory stop if the officer observed unusual conduct which led him reasonably to conclude, in light of his experience, that criminal activity was afoot. However, the panel goes on to say, relying on ***In the Interest of S.J.***, 551 Pa. 637, 713 A.2d 45 (1998) that where an officer "senses that a group of individuals in a high crime area are actively smoking marijuana, that officer has reasonable suspicion to stop a member of the group for investigative purposes." This conclusion impermissibly narrows the requirement of reasonable suspicion set forth in ***Terry***, and its progeny.

An officer must be able to point to articulable facts, that is specific conduct on the part of the individual seized, which led the officer reasonably to conclude that crime was afoot. Thus, a reasonable suspicion must be more than a mere hunch. ***Terry***, at 30.**Error! Bookmark not defined.** In ***S.J.***, ***supra***, the officer did not "sense" that crime was afoot but rather observed a group of individuals openly smoking marijuana. He also observed S.J. trying to hide from him and detected the odor of marijuana on S.J. These specific articulable facts were deemed by the Pennsylvania Supreme

Court to be reasonable suspicion to believe S.J. was involved in criminal activity such that the officer was justified in conducting an investigative stop. In contrast, the Pennsylvania Superior Court in the instant case by holding that an investigatory stop may be based on the "sense" that crime is afoot reduces the standard for an investigatory stop to a mere hunch. A standard that, as noted above, has been specifically rejected. Thus, the panel of the Superior Court has made a finding not in accord with applicable decisions of the Supreme Court of the United States and moreover, a decision misinterpreting the Fourth Amendment to the United States Constitution.

The panel accepted Officer Belak's characterization that L.C. was acting suspiciously and that he smelled marijuana upon exiting his vehicle, as well as the officer's claim that L.C.'s eyes were bloodshot and that he appeared to be under the influence of some substance. These observations, the court stated, coupled with the fact that L.C. was in a high crime area provided the requisite reasonable suspicion for the investigatory stop. The facts herein do not support that conclusion. Officer Belak testified that Mr. Pull, L.C.'s companion, appeared to be smoking a marijuana cigar. However, he did not see L.C. holding the cigar or smoking the cigar. When he exited his vehicle, Mr. Pull handed a marijuana cigar to Officer Belak's partner. Although he stated L.C. appeared to be under the influence of some substance, he did not testify that he detected the odor of marijuana on L.C. These facts do not rise to the level of reasonable suspicion.

Even if Mr. Pull readily admitted he was involved in criminal activity, that admission may not be employed as a basis upon which to conduct an investigative stop of L.C. This Honorable Court has found that the reasonable suspicion that criminal activity was afoot must be particularized to, and based on the specific conduct of the person seized. ***Brown v. Texas***, 443 U.S. 47 (1979). The Pennsylvania Supreme Court reached a like conclusion in

Hicks, 253 A.2d at 279-280. Since any reasonable suspicion present, if, in fact, there was reasonable suspicion present, could only apply to Mr. Pull the panel of the Superior Court both erred in its ruling and rendered a decision not in accord with decisions of this Honorable and contrary to the protections afforded by the Fourth Amendment Pennsylvania.

However, L.C. does not concede that reasonable suspicion existed in this case even with regard to Mr. Pull. To allow the decision of the panel to stand being so devoid of evidence that L.C. was involved or about to be involved in criminal activity stamps a judicial imprimatur on arrest by profiling. Officer Belak testified that, from the inside of his vehicle, he observed Mr. Pull smoking a cigar, which appeared, by the manner in which it was held, to be a marijuana cigar. This reasoning is specious. The reality is that two black males were observed standing together on a street corner in a high crime area and the officers stopped to conduct a "fishing expedition."

Just as the Superior Court could not validate the stop of L.C. by bootstrapping him to his companion, so too the Superior Court could not justify the stop because L.C. was in a know high crime area. Presence in an area of known criminal activity, by itself alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. ***Brown, supra***. However, the fact that the stop took place in a high crime area is not irrelevant. The characteristics of a location are among the relevant considerations in a *Terry* analysis. Thus, coupling the fact that a stop has occurred in a high crime area with other factors may render the circumstances sufficiently suspicious to warrant further investigation. ***Adams v.* Williams**, 407 U.S. 143, 144 (1972). ***See, e.g. , Illinois v. Wardlow***, 528 U.S. 119, 125 (2000) (presence in heavy narcotics trafficking are coupled with unprovoked flight constituted reasonable suspicion). Here, Petitioner contends, as has been argued *infra*, there are no other factors or circumstances that would

validly rise to the level of reasonable suspicion. Thus, the only factor remaining is that L.C. was in a high crime area. This factor, standing alone as it did, was insufficient to support a reasonable, particularized suspicion that L.C. was committing a crime

The panel of the Superior Court erred in not addressing the issue of whether a constitutionally valid frisk of L.C. was conducted by Officer Belak. To justify a pat down the officer must have a reasonable fear that the person he or she is dealing with is "an armed and dangerous individual." ***Terry***, at 27.

In the instant case, the panel relied on a portion of the lower court's opinion, which concluded that Officer Belak never frisked L.C. The lower court's conclusion directly contradicts the record of this case. In Officer Belak's testimony on cross-examination the following exchange occurred:

> Q. Okay. When you approached him, did he make any movements towards you, any threatening movements towards you?
>
> A. No.
>
> Q. Did he appear to you at that time to have – to be armed?
>
> A. I did not know. That's why I searched him.
>
> Q. What was he wearing; do you remember?
>
> A. At this time, no, I do not.
>
> Q. So, did you begin the pat down?
>
> A. Yes, I did. First of all I asked him his name and date of birth, and I told him for his security and mine I was going to pat him down to make sure he didn't have any weapons on him.
>
> Q. Did you do that?

A. Yes, that's routine when we speak on somebody.

Q. How far did you get on the pat down?

A. I touched his legs and as soon as I started touching his leg he said, I'll show you my pockets.

Q. When you touched his legs, did you feel anything?

A. I patted his leg and I felt something in there.

* * *

Q. I want to be clear. When you patted him down, did you feel what you thought was drugs?

A. I felt something -

Q. Did it feel like a weapon?

A. No.

Although Officer Belak may not have conducted a complete pat down, it is clear that he did conduct a search of L.C. A search occurs when an officer explores the outer surface of a person's clothing. ***Terry***, at 16-17, ***see also, Hicks*** 253 A.2d at 278. Thus, the panel should have addressed L.C.'s argument that the pat down was constitutionally infirm.

To justify a self-protective search for weapons an officer must point to specific facts from which could be drawn the inference that the individual stopped was armed and dangerous. ***Terry, supra; Sibron v. New York***, 392 U.S. 40 (1968); ***Hicks, supra; Commonwealth v. Graham***, 721 A.2d 1075, 1077 (Pa. 1998). As pointed out by the portion of the suppression hearing transcript set forth above, the record contains no specific facts that would lead to the inference L.C. was armed and dangerous. Officer Belak did not state

that he noted suspicious bulges in L.C.'s clothing. He did not observe L.C. make any threatening movements toward him. His only justification for the pat down was that it was routine procedure. The aphorism that a pat down for weapons is "routine" cannot replace the requirement that an officer draw a clear inference that an individual is armed and dangerous before he frisks that individual for weapons. Thus not only did the Superior Court err in not addressing the frisk issue its failure to do so resulted in its rendering a decision not in accord with decisions of this Court and the protections afforded by the Fourth Amendment.

The panel also erred in concluding that the drugs in L.C.'s pocket were appropriately seized under the plain view doctrine. Under the "plain view doctrine," an object may be seized as evidence if it has come into the plain view of an officer who has a right to be in the position to have that view. ***Harris v. United States***, 390 U.S. 234, 236 (1968). Thus, plain view justifies a warrantless seizure of evidence when its incriminating character is immediately apparent, the officer is lawfully located in a place where the object can be plainly seen, and the officer has a lawful right of access to the object. ***Horton v. California***, 496 U.S. 128, 137 (1990). More simply, the plain view doctrine provides grounds to seize an item where the officer's access to the item has some prior justification under the Fourth Amendment. ***Texas v. Brown***, 460 U.S. 730, 738-39 (1983). Thus, whether evidence is in plain view at the time it is seized is founded on the legality of the intrusion that enables the police officer to perceive and seize the object.

In the instant case, but for the illegal investigatory detention, Officer Belak would not have been in a position to view the material inadvertently removed from L.C.'s pocket. The intrusion enabling the officer to perceive and seize the evidence being illegal, the plain view doctrine is inapposite and the panel should have reversed the Order of the Erie County Court of Common Pleas refusing the Motion to Suppress and vacated the judgment of sentence.

CONCLUSION

For the reasons adduced above, this Court should grant certiorari in the instant case and reverse the decision of the court below.

Respectfully submitted,

/s/Joseph P. Burt.
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APPENDICES

APPENDIX A - ORDER OF THE PENNSYLVANIA SUPREME COURT, DATED JANUARY 9, 2002

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN THE MATTER OF L.C.,	: No. 499 WAL 2001
Petitioner	:
	: Petition for Allowance
v.	: of Appeal from the
	: Superior Court
COMMONWEALTH	:
OF PENNSYLVANIA,	:
Respondent	:

ORDER

PER CURIAM:

AND NOW, this 9th day of January, 2002, the Petition for Allowance of Appeal is DENIED.

Mr. Justice Eakin did not participate in the consideration or decision in this matter.

A True Copy Patricia Honard
As of January 9, 2002
Attest: /s/ Patricia Honard
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX B - OPINION AND ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA, DATED JULY 10, 2001

IN THE MATTER OF: L.C., Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA,
vs.	:	
COMMONWEALTH OF PENNSYLVANIA, Appellee	:	No. 1985 WDA 2000

Appeal from the Judgment of Sentence October 31, 2000
In the Court of Common Pleas of Erie County,
Criminal, No. 787 of 2000

BEFORE: EAKIN, HESTER, and KELLY, JJ.

MEMORANDUM:

Appellant, L.C., appeals form his judgment of sentence following his adjudication as delinquent by the Erie County Court of Common Pleas. Specifically, he challenges the trial court's order denying his motion to suppress evidence. We affirm.

The relevant facts and procedural history are as follows. On September 9, 2000, Officers James Belak and Theodore Wisnieski of the Erie Bureau of Police were on patrol in a high crime area of the 2300 block of French Street in Erie, Pennsylvania. The Officers noticed Appellant and John Pull standing by a fence. John Pull was smoking what appeared to be a marijuana cigar or "blunt". Upon realizing they were being watched by police officers, Appellant and Pull acted unusually surprised (opening their mouths and eyes very wide).

Based upon their observations, the officers decided to stop and approach the individuals. The officers smelled the odor of burning marijuana as they exited their vehicle to approach the suspects. Mr. Pull approached the officers and handed the cigar to Officer Wisnieski. As this occurred, Officer Belak approached Appellant. While asking for Appellant's name and age, the officer noticed that Appellant had bloodshot eyes and appeared to be under the influence of drugs. Officer Belak then attempted to pat down Appellant to make sure he was not armed. Appellant responded saying: "I don't have nothing on me." Appellant then reached into his pockets to voluntarily show the officer its contents. Appellant revealed a cellophane bag containing what the officer recognized as crack cocaine.

Appellant tried to cover up his error by quickly placing his hand back into his pocket. Officer Belak informed Appellant that he saw the crack and that he wanted Appellant to turn it over. Instead, Appellant began to run. When the officer finally tackles Appellant, he noticed a white gritty substance around Appellant's mouth.

After taking him to the police station, the officers searched Appellant. They discovered a bag of marijuana, a bag of "crack" cocaine and $190.00 in cash. Appellant was charged with three violations of the Controlled Substance, Drug, Device and Cosmetics Act[1] and one count of tampering with physical evidence.[2]

On September 20, 2000, the Juvenile Court Master held a combined suppression and adjudication hearing in which he recommended Appellant's motion to suppress be granted. After reviewing the Master's recommendation, the trial court decided to deny Appellant's motion to suppress

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[1] 35 P.S. § 780-113.

[2] 18 Pa.C.S.A. § 4910.

on October 5, 2000. On October 12, 2000, Appellant filed a motion for reconsideration. The court reviewed the transcript of the Master's hearing and subsequently refused to modify its order denying the suppression motion. At a dispositional hearing on October 31, 2000, Appellant was adjudicated delinquent and in need of treatment, rehabilitation and supervision. The court committed the juvenile to the Cornell-Abratas [*sic*] drug and alcohol treatment facility in Marienville, Pennsylvania for an indefinite period. Counsel filed a timely notice of appeal on November 27, 2000, and a timely statement of matters complained of on appeal on December 11, 2000.

Appellant raises the following issues for our review:

> 1. WAS IT ERROR FOR THE COURT BELOW TO DENY [APPELLANT'S] MOTION TO SUPPRESS EVIDENCE WHERE THERE WAS NO LEGAL BASIS FOR THE POLICE TO EITHER STOP [APPELLANT] OR TO FRISK HIM?
>
> 2. WAS IT ERROR FOR THE COURT BELOW TO APPLY THE PLAIN VIEW DOCTRINE IN THIS MATTER WHERE THE POLIC OFFICERS HAD NO LEGL RIGHT TO BE IN A POSITIO9N TO HAVE THE VIEW GIVEN THE ILLEGAL STOP AND FRISK?

(Appellant's Brief at 3).

The applicable standard and scope of review provides:

> Our standard of review in addressing a challenge to a trial court's denial of a suppression motion is whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. When reviewing rulings of a suppression court, we must consider only the

> evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the findings of the suppression court, we are bound by these facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Hawkins, 549 Pa. 352, 377, 701 A.2d 492, 504-05 (1997), cert. Denied, 523 U.S. 1083, 118 S.Ct. 1535, 140 L.Ed. 2d 685 (1988)(internal citations omitted).

In his first issue, Appellant argues that the court erroneously denied his motion to suppress evidence because there was no legal basis for the police officer to stop and frisk him. Appellant contends that the officer's "investigatory detention" of Appellant must be supported by reasonable suspicion that criminal activity is afoot. Appellant avers that reasonable suspicion did not exist in this instance because there was no evidence that would allow Officer Belak reasonably to conclude that Appellant had committed a crime or was about to commit a crime. Furthermore, Appellant maintains that Officer Belak's attempted frisk was not a justified *Terry*[3] frisk, because Officer Belak had no reason to believe Appellant was armed and dangerous.

Under *Terry*, a police officer may conduct a brief investigatory stop of an individual if the officer observes unusual conduct which leads him to reasonably conclude, in light of his experience, that criminal activity may be afoot. *Id.* If an officer senses that a group of individuals in a high crime area are actively smoking marijuana, that officer has reasonable suspicion to stop a member of the group for investigative purposes. *See In the Interest of S.J.*, 551 Pa. 637, 713 A.2d 45 (1998). An officer may frisk an individual if

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[3] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

the officer observes "unusual and suspicious conduct on the part of the individual seized." ***Commonwealth v. Hicks***, 434 Pa. 153, 158, 253 A.2d 276, 279 (1969). Alternatively, the officer may conduct a self-protective search for weapons when the officer can point to "particular facts from which he could reasonably infer that the individual stopped was armed and dangerous." ***Commonwealth v. Graham***, 554 Pa. 472, 477, 721 A.2d 1075, 1077 (1998) (citing ***Commonwealth v. Pinney***, 474 Pa 210, 216, 378 A.2d 293, 296 (1977)).

In the instant case, Officer Belak noticed appellant acting suspiciously as he drove past. Upon exiting his car, the officer detected the scent of burning marijuana. Furthermore, when the officer approached Appellant, he noticed that Appellant's eyes were bloodshot and that he appeared to be under the influence of some substance. These observations coupled with the fact that Appellant was in a high crime area known for drug activity provided the officer with the requisite reasonable suspicion necessary to conduct an investigatory stop of Appellant. ***See In the Interest of S.J., supra.*** Additionally, the trial court stated:

> It is the finding of the [trial court] that Officer Belak never performed a frisk upon the Appellant. Rather, before the pat-down was commenced the Appellant voluntarily revealed the contents of the front pocket of his pants. In doing so, he placed the crack-cocaine within plain view of Officer Belak. This situation is no different than if the Appellant had made a voluntary statement. Accordingly, pursuant to the "plain view doctrine" the Appellant's Motion to Suppress is hereby denied.

(Trial Court Opinion, dated December 18, 2000, at 3-4). Thus, Appellant's first issue lacks merit.

Appellant next argues that the trial court erroneously concluded that the drugs were observed in plain view. Appellant contends that the evidence exposed to the officer

was a product of an illegal investigatory detention. Therefore, Appellant maintains that the officer was not legally in a position to benefit from evidence in his plain view when he illegally detainee Appellant. Appellant concludes that the evidence should be suppressed. We disagree.

Under the plain view doctrine, an officer can seize evidence without a warrant when:

> (1) the initial intrusion if lawful – the officer does not violate the Fourth Amendment in arriving at the place from which the evidence is lawfully viewed;
>
> (2) the incriminating character of the object is immediately apparent; and
>
> (3) the officer has a right of access to the object.

Commonwealth v. Wells, 657 A.2d 507, 509 (Pa.Super. 1995), *appeal denied*, 542 Pa. 668, 668 A.2d 1131 (1995) (citations omitted).

As determined in our discussion under issue one, Officer Belak's detention of Appellant was based upon reasonable suspicion. Therefore, Officer Belak was lawfully in a position to view the crack cocaine when Appellant revealed the contents of his pocket to the officer. ***See Wells, supra***. Consequently, the trial court properly denied Appellant's motion to suppress because the evidence was observed in plain view. ***Id.*** Accordingly, we affirm Appellant's judgment of sentence.

Judgment Entered:

/s/ Eleanor R. Valecko
Deputy Prothonotary
Date: July 10, 2001

APPENDIX C - OPINION IN SUPPORT OF ORDER OF THE COURT OF COMMON PLEAS OF THE SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA, DATED DECEMBER 18, 2000

IN THE MATTER OF	:	IN THE COURT OF COMMON PLEAS
	:	OF ERIE COUNTY, PENNSYLVANIA
L.C.,	:	JUVENILE DIVISION
	:	
A MINOR	:	Docket No. 787 of 2000

OPINION IN SUPPORT OF ORDER

AND NOW, this 18th day of December, 2000, pursuant to Rule 1925(a) if the Pennsylvania Rules of Appellate Procedure, the reasons for the Court's Order of October 5, 2000, where the Court **ORDERED, ADJUDICATED,** and **DECREED** that [L.C.]'s Motion to Suppress be **DENIED** are as follows:

I. FACTS

At approximately 6:15 on September 9, 2000, while on routine patrol in a high crime area of the 2300 block of French Street, in Erie, Pennsylvania, Officers Jim Belak and Theodore Wisnieski noticed the Appellant and John Pull standing by a fence. From a distance it appeared to Officer Belak that they were smoking a marijuana cigar. Upon closer inspection, John Pull was holding a marijuana cigar and appeared to be handing it to the Appellant as the officers pulled up to the curb. When the Appellant and John Pull saw the officers they both acted unusually surprised, *e.g.*, opening their mouths and eyes very wide upon noticing the police. The officers decided to stop because of the suspicious and odd behavior they observed. As they exited the patrol care [sic] John Pull approached Officer Wisnieski with the marijuana cigar. Detecting the smell of burning marijuana in the air, Officer Belak split from his partner and

approached Appellant in order to ask his name and age. He noticed that the Appellant had bloodshot eyes and appeared to be under the influence of drugs. Pursuant to the routine of the Erie Police Department and because he was unsure whether Appellant was armed, Officer Belak decided to perform weapons pat-down of the outside of the Appellant's clothes. However, as Officer Belak began to attempt a pat-down the Appellant said "I don't have nothing on me" in an attempt to mislead him. At the same time the Appellant voluntarily reached into the front pocket of his pants and accidentally pulled out a cellophane bag of crack cocaine. He then quickly shoved the drugs and his hand back into his pocket. Officer Belak told the Appellant that he saw what he believed to be a cellophane bag of crack cocaine. When he told the Appellant to hand over the cocaine the Appellant turned and ran.

II. ANALYSIS

The factors typically considered in determining whether a detention is investigatory or custodial are the basis for the detention (the crime suspected and the grounds for suspicion); the duration of the detention; the location of the detention (public or private); whether the suspect was transported against his will (how far, why?); the method of detention; the show, threat or use of force; and, the investigative methods used to confirm or dispel suspicions. Commonwealth v. Grammer, 665 A.2d 1269, 1274 (Pa.Super. 1995) (citations omitted), *appeal denied*, 686 A.2d 1308 (Pa. 1996). In this instance, there is not evidence that Appellant was subjected to a lengthy detention, transported without his consent, or subject to unreasonable investigatory methods used to confirm or dispel suspicions under these circumstances. In the Interest of S.J., 713 A.2d 45 (Pa. 1998). Under these circumstances, we find that Officer Belak's conduct was not sufficiently coercive to elevate the detention from investigative to custodial in nature.

It is well settled that a police officer may conduct a brief investigatory stop of an individual if the officer observes unusual conduct which leads him to reasonably conclude [*sic*], in light of his experiences, that criminal activity may be afoot. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968). Officer Belak had the requisite reasonable suspicion to justify the investigatory stop because under these facts, he reasonably concluded that criminal activity was afoot. Although Officer Belak could not speak with certainly as to whether Appellant was smoking from the marijuana cigar, his cognizance of the Appellant's suspicious behavior and his observance of illegal activity by the Appellant's companion combined with his detection of burning marijuana and the fact that this was a high crime area known for drug activity, provided him with the requisite reasonable suspicion necessary to conduct an investigatory stop of the Appellant. In the Interest of S.J., 713 A.2d at 47-48. Furthermore, when he approached the Appellant he noticed that his eyes were bloodshot and that he appeared to be under the influence of some drug.

Having concluded that the investigatory stop was legal, we now turn to the issue of whether a subsequent frisk occurred. Case law provided that if during the course of a valid investigatory stop, an officer observes unusual and suspicious conduct on the part of the suspect which leads him to reasonably believe [*sic*] that the suspect may be armed and dangerous, the officer may conduct a pat-down of the suspect's outer garments for weapons. Terry, *supra*. However, it is the finding of the Court that Officer Belak never performed a frisk upon the Appellant. Rather, before the pat-down was commenced the Appellant voluntarily revealed the contents of the front pocket of his pants. In doing so, he placed the crack cocaine within plain view of Officer Belak. This situation is no different than if the Appellant had made a voluntary statement. Accordingly, pursuant to the "plain view doctrine" the Appellant's Motion to Suppress is DENIED.

Furthermore, although Officer Belak did not frisk the Appellant, given the immediacy of the situation, the Court believes that under these circumstances if Officer Belak had committed a sussequ3nt frisk that there would have been sufficient particular information known to him to satisfy the reasonable suspicion requirement of Terry v. Ohio. In the Interest of S.J., 713 A.2d at 49 (dissenting opinion).

BY THE COURT,

/s/Michael E. Dunlavey, Judge

APPENDIX D - OPINION AND ORDER OF THE COURT OF COMMON PLEAS OF THE SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA, DATED OCTOBER 31, 2000

IN THE INTEREST OF	:	**IN THE COURT OF**
	:	**COMMON PLEAS**
L.C.,	:	**OF ERIE COUNTY,**
	:	**PENNSYLVANIA**
	:	**Juvenile Division**
A Minor	:	**Docket No. 2000-00787**

ORDER

AND NOW, to wit, this 31st day of October, 2000, after a Dispositional Hearing, the following allegations are sustained:

Allegation 8 - Violation of the Controlled Substance, Drug, Device and Cosmetic Act

Allegation 9 - Violation of the Controlled Substance, Drug, Device and Cosmetic Act

Allegation 10 - Violation of the Controlled Substance, Drug, Device and Cosmetic Act

L.C., the above juvenile, is hereby adjudicated delinquent and the Court finds that continuation in the home would be contrary to his welfare and being in need of treatment, supervision and rehabilitation it is thus ORDERED and DECREED that said juvenile shall be committed to Cornell Abraxas I, Blue Jay Village, Forest Road, P.O. Box 59, Marienville, Pennsylvania 16329-0059, for an indefinite period of time, under the supervision of the Chief Juvenile Probation Officer and his assistants.
It is further ORDERED and DECREED that:

A. Juvenile shall:

1. Cooperate completely with the Cornell Abraxas I staff.

2. Attend and participate in any and all counseling/programs recommended by Cornell Abraxas 1, especially drug and alcohol counseling.

3. Complete 50 community service hours.

4. Obtain his GED

B. Juvenile's grandmother/guardian, Geraldine McConnell, 3812 Cherry Street, Erie, Pennsylvania 16503, shall be responsible for any and all medical expenses incurred by juvenile so long as said juvenile, L.C., is a cost of the County of Erie, Pennsylvania.

C. Maintenance shall be determined according to the guidelines set forth by the Domestic Relations Office and monies collected by the Domestic Relations Office for L.C. shall be forwarded to the Erie County Juvenile Probation Office.

Juvenile shall remain detained at the Edmund L. Thomas Adolescent Center, 4728 Lake Pleasant Road, Erie, Pennsylvania 16504, until placement is arranged.

Subject to further ORDER of this Court.

_____

Michael E. Dunlavey, Judge

APPENDIX E - ORDER OF THE COURT OF COMMON PLEAS OF THE SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA, DATED OCTOBER 5, 2000

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
v.	:	
L.C.,	:	JUVENILE DIVISION
A MINOR	:	Docket No. 787 of 2000

ORDER

AND NOW, this 5th day of October, 2000, it is hereby ORDERED, ADJUDGED, and DECREED that the Defendant's Motion to Suppress is DENIED.

BY THE COURT:

/s/ MICHAEL E. DUNLAVEY, JUDGE

MEMORANDUM

TO: MASTER ROBERT MURRAY
ELVAGE MURPHY, ESQ.
INES MASSELLA, ESQ.
FROM: JUDGE DUNLAVEY
DATE: October 5, 2000
RE: [L.C.]; DATE OF ARREST 9/9/00

The court in reviewing the Findings of Fact made by the Master in this case, Robert Murray, disagrees with the recommendation that the Motion to Suppress be granted and the charges dismissed against L.C.

The facts are that when asked to identify himself, [L.C.] promptly identified himself and then voluntarily stated to the police that he had nothing on him and pulled his hand out of his pocket to show the police. Unfortunately for [L.C.], when he pulled his hand out of his pocket in plain view was a baggie consistent with and apparently possessing marijuana. Officer Bielak demanded [L.C.] turnover the bag to him, at which point, the Defendant ran. At this point, it had not reached a stop-and-frisk, nor was the Defendant precluded from leaving the scene. It was his accidentally or inadvertently producing the contraband that lead to the police officer taking the actions that he did.

There was no constitutionally protected right that was violated at the time that Officer Bielak asked the questions of the defendant particularly in light of the location where this took place; in a known drug dealing neighborhood and in light of the fact that the gentleman standing next to the Defendant appeared to be handing what was believed to be a marijuana cigar or "blunt" to the Defendant.

- END OF MEMO -

APPENDIX F - FINDINGS AND RECOMMENDATIONS OF THE JUVENILE COURT MASTER FOR THE COURT OF COMMON PLEAS OF THE SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA, DATED SEPTEMBRE 20, 2000

DATE September 20, 2000 **TIME** 1:30 P.M.
JUVENILE L.C. **D.O.B.**
ADDRESS **DOCKET NO.**
PARENT **DEFENSE COUNSEL** Massella
PROB. OFF. Signorino **DISTRICT ATTORNEY** Murphy

FINDINGS OF FACT

This is the combined suppression and adjudiction hearing in the interest of [L.C.].

On the evening of September 9, 2000, in the 2300 block of French Street in Erie, Officers Bielak and Wisniewski, riding in a marked patrol unit, saw [L.C.} and another individual, John Poole, standing on the sidewalk near the corner. At the time [L.C.'s] back was turned to the street, and the officers noticed that Poole was holding what appeared to be a marijuana cigar, or 'blunt.' When Poole say the police exiting their vehicle, Officer Bielak testified, his eyes widened and his mouth opened. He approached Officer Wisniewski and handed him the blunt. Bielak asked [L.C.] his name and address, which [L.C.] freely gave him, then announced that he was going to pat [L.C.] down. [L.C.] responded that there was no need to, that he had nothing. To demonstrate this, he placed his hand in his pocket, then withdrew it. At this point Bielak noticed a baggy which [L.C.] had inadvertently half-withdrawn from his pocket. Bielak demanded that [L.C.] turn in [*sic*] over to him, at which point [L.C.] ran. During the chase [L.C.] appeared to

put his hand in his pocket, then to his mouth, and when he was caught there was a whitish, gritty substance (which was never tested) around his mouth. At the booking counter he was found to be in possession of .45 grams of cocaine and 1.25 grams on [*sic*] marijuana, which were found in separate baggies on his person, and a large rock of crack which was loose in his pocket, and which the Master believes is included in the above mentioned weight of cocaine.

Given the above scenario, as described by Officer Bielak, the Master is compelled to agree with counsel for the defendant that no constitutionally-acceptable reason existed to question [L.C.], or to tell him that he was about to be patted down. He had not been observed to commit a crime, he did not (initially) flee, he cooperated with the officer's request for name and address, and there was no reason to believe that he might be armed. The plain view doctrine is inapposite, inasmuch as the officer's announcement that he was about to conduct a pat-down search set in motion the train of events which led to his viewing the first baggy. The fact that [L.C.]'s companion was apparently smoking a marijuana cigarette cannot vitiate this defendant's constitutionally-protected right against unreasonable search, and for that reason the Master believes that the petition to suppress all evidence taken from [L.C.] should be granted.

CONCLUSIONS OF LAW

The Master concludes that the evidence taken from the person of [L.C.] on the evening of September 9, 2000 was found as the result of an unconstitutional stop, search, and seizure, and should be suppressed.

RECOMMENDATION

The Master recommends that the defense Motion to Suppress be granted, and that Allegations 8 through 11 all be dismissed.

Motion to Suppress
is denied
MED,J
10/4/00[1]

Date_____ Respectfully submitted,

Confirmed_____ By /s/Robert W. Murray
Judge Master

[1] On the original document, Judge Michael E. Dunlavey drew a line through the lines "Date" and "Confirmed," and made the hand written notation appearing in typeface herein.

APPENDIX G - TRANSCRIPT OF THE SUPPRESSION AND ADJUDICATION HEARING HELD BERFORE THE JUVENILE COURT MASTER ON SEPTEMBRE 20, 2000 (REPRODUCTION OF SUPPRESSION PORTION OF HEARING ONLY)

IN THE MATTER OF	:	**IN THE COURT OF**
	:	**COMMON PLEAS**
[L.C.]	:	**JUVENILE DIVISION**
A JUVENILE	:	**No. 787-2000**

Suppression Hearing proceedings held before appointed Master Robert W. Murray, Esquire, on Wednesday, September 20, 2000, in the Erie County Courthouse, 140 West Sixth Street, Erie, Pennsylvania, 16501, in Courtroom Number 7, commencing at 2:15 p.m. and concluding at 2:45 p.m.

APPEARANCES:

Julianne Weibel Folz, Esquire
In behalf of the Commonwealth of Pennsylvania

Ines Massella, Esquire
On behalf of [L.C.], the juvenile

P R O C E E D I N G S

MASTER MURRAY: Ms. Weibel Folz?

MS. WEIBEL FOLZ: Thank you, your Honor. This is time for the Suppression Hearing and Adjudication Hearing involving Lavelle Carroll.

MASTER MURRAY: And Mr. Murphy was the one is that went home ill.

MS. WEIBEL FOLZ: I think he's more seriously ill than I am. I just can't talk real well.

MASTER MURRAY: Okay.

MS. WEIBEL FOLZ: Your Honor, the Suppression Hearing, what's in the motion to suppress filed by Attorney Massella are the Allegations of delinquency which are 8, 9, 10 and 11.

Your Honor, I believe the testimony that we would provide by Officer Belak would cover both Suppression and Adjudication.

MASTER MURRAY: Right.

MS. WEIBEL FOLZ: I don't think there will be a need for any further testimony.

MASTER MURRAY: Do you have any objection to consolidating this --

MS. WEIBEL FOLZ: No, that was the reason for this. When I spoke to Mr. Murphy we both agreed that the testimony would be the same in each proceeding.

MASTER MURRAY: All right. I presume that Allegations 8 through 11 are denied?

MS. MASSELLA: Yes.

MASTER MURRAY: Do you want to call your first witness?

MS. WEIBEL FOLZ: Thank you. Call Officer Belak.

JAMES BELAK, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WEIBEL FOLZ:

Q. Officer, could you please state your full name for the record?

A. Name is Officer Jim Belak of the Erie Police Department.

Q. Were you working with the Erie Police Department on September -- One moment, your Honor. September 12 -- That's not correct. September 9th, 2000?

A. Yes.

Q. And what shift were you working on that day?

A. I believe it was second shift.

Q. Who were you working with?

A. Officer Theodore Wisnieski.

Q. At approximately 6:15 in the evening or so, where were the two of you located?

A. We were traveling south on French Street in the -- I believe it was 2300 block.

Q. Okay. When you got to that area, did the two of you observe anything unusual?

A. Yes, we noticed two males standing on the side of a wooden fence smoking what appeared to be a marijuana cigar. Just the way they were smoking it. And when they saw us their reactions on their face, we decided on stop and to investigate further.

Q. Okay. When you say, by the way they were smoking it and the reactions of their face or appearance on their face, what are you referring to? What did you observe?

A. We observed John Pull, Jr. standing there with -- the way he was holding the cigar and smoking it, it

appeared that he was handing it to Lavelle, the defendant. And when he saw us, it looked like he was handing it to him, his mouth opened up and his eyes got real big that we were there, and we stopped.

Q. When you stopped, who had cigar?

A. John Pull, Jr.

Q. What happened when you stopped?

A. When we exited the vehicle. John Pull walked over to Officer Wisnieski and said, okay, we're wrong. Here, here it is. I'm not doing anything. And he handed the suspected marijuana cigar to Officer Wisnieski.

Q. When you got out of the car, did you notice any odors or anything like that?

A. Yeah, it smelled like burning marijuana.

Q. What happened to the cigar that John Pull, handed to Officer Wisnieski?

A. Officer Wisnieski put it out, and looked at it and started speaking with John Pull. And then I believe he destroyed it.

Q. Okay. What were you doing while that was going on?

A. I was speaking to Lavelle Carroll.

Q. What happened during your conversation with him -- Well first of all, the person you're talking about as being Lavelle Carroll, is he present here today?

A. Yes, he is.

Q. Can you identify where he is and what he's wearing?

A. Yes, he's sitting over there in the red shirt, sitting at the defense table.

MS. WEIBEL FOLZ: I'd like the record to reflect he's identified the defendant.

MASTER MURRAY: All right.

BY MS. WEIBEL FOLZ:

Q. What happened when you were talking to him?

A. I got Lavelle's name and his date of birth. And I told him, before I speak to you any further I'd like to pat you down for weapons for my safety.

Q. What happened then?

A. And as I was patting him down, I touched his leg. And as soon as I touched his leg he goes, I don't have nothing on me. I'll show what you I have in my pocket. And he pulled out what a -- It was a cellophane bag and it appeared to be crack cocaine in it.

I don't think he meant to show it to me, so he shoved it back in his pocket real fast, and he kept his hand in his pocket. And I said, I just saw what you pulled out of your pocket, do you want to give it to me now? And he said, hold on, I'll show you what I have. I said, give me that crack. I saw it. It's too late, you can't hide it.

He said, I got -- Hold on. He was moving his hand around like he was trying to on grab something else and he stuck his hand in his left pocket. I said, nice try, it's in your right pocket. Give it to me now. And he took a step back and took off running.

Q. Where did he run?

A. He ran east through a back alley. It appeared to be a field through the grass and some cut down trees. And while he was running, he stuck his hand in his pocket and to his mouth and it appeared he was chewing on something. I don't know. I didn't see, you know. I didn't see what he had in his hand as he was running through field.

When he got to the park, he started slowing down and that's when I tackled him and handcuffed him.

Q. When -- Prior to him putting his hand to his mouth, where was his hand?

A. It was in his right pocket.

Q. Okay. And when you tackled him, what did you observe?

A. I looked at his mouth and he had a milky substance, like a gritty substance around his mouth and --

Q. Did you -- Go ahead.

A. He just had the milky substance around his mouth.

Q. Okay. When you were talking with him when you

initially made the stop, did he have that substance around his mouth at that time?

A. No, he did not.

Q. Okay. Once you had apprehended him, what happened at that point?

A. We detained him for an investigatory detention to find out -- He had no ID on him. We wanted the take him down to the station to find out who he actually was and if he was actually a juvenile.

Q. Did he give the name of Lavelle Carroll?

A. He gave us Lavelle Carroll but he had no ID and he said he was a juvenile. And because he showed me the crack, we wanted on take him down to the station to find out who he actually was and notify his parents.

And at the booking counter we were inventorying his personal items and that's when we found in the small pocket in the jeans -- I think that's -- It was in his right pocket. I'm not sure if it was small pocket, there was a bag of leafy substance which appeared to be marijuana. We sent that away to get tested.

And there was a cellophane bag that he showed me first time and a piece of what appeared to be crack cocaine, which we field tested all of it and it came back blue. So we mailed it all away to the Pennsylvania State Police for testing.

Q. Okay. In the cellophane bag that he had in his right pocket, what was in that bag?

A. It had appeared to be crack cocaine.

Q. Was it -- Were they rocks of crack cocaine?

A. They were tiny rocks --

Q. Do you recall how many?

A. A few, two or three.

Q. Okay. Then was there any additional crack cocaine found on him?

A. Yes, there was a large rock that was not inside the baggy, it was in his pocket.

Q. Okay. And in which pocket?

A. In his right pocket.

Q. And you indicated all of those field tested positive and they were sent to the State Police Lab; is that correct?

A. Yes, because all except the marijuana, I don't know that that could be field tested, but the crack cocaine was tested and that tested positive.

Q. Okay. I'm going to show you what I've marked as Commonwealth's Exhibit 1. Can you take a look at that document (indicating).

A. Yes.

Q. What is that?

A. That's the report of the Pennsylvania State

Police, the results.

Q. Does it indicate what items were tested by the State Police?

A. It indicates one small plastic bag containing an off white substance, one plastic bag containing vegetable material.

Q. Does it indicate what the findings were, the results?

A. The results, number one, the white substance in item number one weighed 45 hundredths of a gram, and contained crack cocaine or contained cocaine. It says schedule two in parenthesis.

And number two, the bag in item number two contained one and a fourth grams of marijuana, schedule one in parentheses.

Q. Okay, thank you. While the defendant was at the booking counter were there any other items found on him besides the cocaine and the marijuana?

A. Yes, there were 100 and -- I believe $190 in cash in all different denominations and in two separate folds. It wasn't all folded together.

Q. Do you recall what the amounts were or approximately what amounts were in each of the folds that you're referring to?

A. I believe one of them had a lot of ones, some

tens, fives and a twenty. Maybe a couple twenties and there was another one with maybe a with a twenty dollar bill a five dollar bill and some ones.

MS. WEIBEL FOLZ: Okay, I have no further questions, your Honor.

(At which time, Commonwealth Exhibit No. 1 was marked for purposes of identification.)

MASTER MURRAY: Ms. Massella?

CROSS-EXAMINATION

BY MS. MASSELLA:

Q. Okay, Officer, I don't know, correct me if I'm wrong, but I thought you said you found a baggy of marijuana?

A. Yes.

Q. A baggy of crack, suspected crack?

A. Yes.

Q. And a rock of crack cocaine?

A. Right.

Q. Where is the test for the rock?

A. It's part of the 45. They must have stuck it in the baggy and tested it all together.

Q. Okay.

MASTER MURRAY: Officer, if you're going

to be doing that, it may be best to carry that little pack.

BY MS. MASSELLA:

Q. What I want to do, Officer, is have you draw the house and the fence because I've had a difficult time visualizing this no matter whom I've spoken to. So, if you could do that?

A. Okay. (Indicating). Okay, here's French Street (indicating). Here's the fence (indicating). Here's the house (indicating).

Q. Okay.

A. Okay. This would be Lavelle (indicating), and this would be John (indicating).

Q. Okay.

A. Here's where we stopped (indicating).

Q. You stopped the car right there?

A. The police car, yes.

Q. Okay. You can have a seat. What was the distance between Lavelle and John?

A. About two feet, maybe three feet.

Q. Were they facing each other or away from each other?

A. Kind of at an angle, like a triangle.

Q. I don't --

A. Say I'm standing here (indicating), not face

to face but to sideways, and he's standing right here (indicating).

Q. And you would be John in that situation?

A. John would be -- he would have been on the far side.

Q. Okay.

A. South side.

Q. When you pull up in your police vehicle -- when you drive by and then pull up in your police vehicle, how far away are you from them?

A. Anywhere between five and ten feet. The street to them, probably five feet.

Q. Were you driver or passenger?

A. I was the passenger.

Q. What drew your attention to them?

A. As we were driving up, we see these two gentlemen standing there smoking what appeared to be a blunt cigar, a marijuana cigar.

Q. Okay, let me stop you there.

A. Just the way the one individual was holding it.

Q. So, he was holding it between his fingers like this (indicating)?

A. Kind of like, right.

Q. That gave you to believe that it was a

marijuana cigar and not a regular cigar?

A. Yes, we wanted to investigate further. We wanted to stop. Just their reactions to --

Q. That was after you stopped?

A. As they spotted us, the reaction was when they saw us their mouths were open, their eyes were big. And John pulled it -- It looked like he didn't believe what he saw, so. . .

Q. Okay. Did you see Lavelle Carroll with this suspected blunt in his possession?

A. No.

Q. Did you see him smoke off of it?

A. No.

Q. Did you see him touch it at any time?

A. No.

Q. Did he appear to be standing still when you pulled up or did can he appear to be walking?

A. He appeared to be standing right next to John Pull.

Q. Okay. So, you and your partner approached them; is that correct?

A. Yes.

Q. Do you both get out of the car at the same time?

A. Yes.

Q. And you split off and each of you took one of these --

A. I came around the front of the car and he started talking to John, and I walked over to Lavelle.

Q. Before he started talking to John, did John move in any direction?

A. John walked forward and handed the cigar to Officer Wisnieski.

Q. Okay. And what was Lavelle doing at this time?

A. Lavelle was standing where he was standing when we pulled up.

Q. Did you approach him or did you ask him to come to you?

A. I approached him and he appeared -- his eyes were bloodshot and he appeared to be under the influence of something.

Q. Okay. But still up to this point you hadn't seen him smoke anything?

A. No. When we pulled up, like I said, it appeared that John was going to hand him the cigar but he did not, nor did I see him at any point have the cigar in his hand.

Q. Okay. When you approached him, did he make any movements towards you, any threatening movements towards

you?

A. No.

Q. Did he appear to you at that time to have -- to be armed?

A. I did not know. That's why I searched him.

Q. What was he wearing; do you remember?

A. At this time, no, I do not.

Q. So, did you begin the pat down?

A. Yes, I did. First of all I asked him his name and date of birth, and I told him for his security and mine I was going to pat him down to make sure he didn't have any weapons on him.

Q. Did you do that?

A. Yes, that's routine when we speak on somebody.

Q. How far did you get on the pat down?

A. I touched his legs and as soon as I started touching his leg he said, I'll show you my pockets.

Q. When you touched his legs, did you feel anything?

A. I patted his leg and I felt something in there.

Q. Okay. At some point did he show you -- Did he pull out some money and show it to you?

A. No, first of all he pulled out that suspected crack cocaine. That was first thing he showed me. And to

-- I don't believe he meant to show it to me the way he shoved it back into his pocket.

Q. That was in what pocket?

A. That was in his right pocket.

Q. So prior to that he hadn't pulled any money out of his left pocket to show you?

A. Not that I can remember.

Q. Okay. Do you recall sticking your hands in his pockets?

A. Nope.

Q. Okay. Now when he, as you say, pulled out the suspected crack cocaine, what did you say to him?

A. He stuck it back in his pocket and I told him to hand it here. I said, I know what you just showed me, now give it here. And he said, what? And I said, we're not going to play these games, hand me what you just pulled out.

It was crack. It was in a cellophane bag. It was a white substance. It appeared to be crack. I told him to hand it to me. And he said, hold on. And it appeared he was moving it around to try to grab something else to show me something else but he never pulled it back out of his pocket.

He stuck his hand in his left pocket and acted like he was going to grab something, and as he stuck his hand in his left pocket, he took off running.

Q. I want to be clear. When you patted him down, did you feel what you thought was drugs?

A. I felt something --

Q. Did it feel like a weapon?

A. No.

Q. Okay.

A. I never did get to finish the pat down.

Q. That was going to be my next question. So you only got as far as his front pants pocket?

A. Uh-huh.

Q. And didn't get around to the back or anything?

A. No.

Q. Now, you mentioned some white powder or white grit around his mouth?

A. Uh-huh.

Q. Was that ever tested to see if it contained cocaine?

A. No.

Q. Okay. You said that -- How far away from him -- Excuse me. So he takes off and you chase after him?

A. Uh-huh.

Q. How far -- How much distance between the two of you?

A. When he took off he probably had a good ten to fifteen yard jump.

Q. Is that when you say you saw him chewing?

A. No, this is after we began running. We were running through the alley. And halfway between the alley it appeared he sticks his hand -- He's about 20 yards in front of me. He's sticking his hand in his pocket and putting it to his mouth and he appeared to be chewing.

Q. You could see that from behind?

A. I could see him doing this (indicating).

Q. Chewing?

A. Appeared to be. Why would he stick what appeared to be crack cocaine into his mouth?

Q. But he never turned around and looked at you when he was running?

A. No, he just kept on running.

MS. MASSELLA: Just a moment, please. I have no other questions.

MASTER MURRAY: Ms. Weibel Folz?

MS. WEIBEL FOLZ: No other questions.

MASTER MURRAY: All right, thank you, Officer.

MS. WEIBEL FOLZ: Your Honor, I would just ask for admission of Commonwealth's Exhibit 1.

MASTER MURRAY: Ms. Massella?

MS. MASSELLA: May we approach?

MASTER MURRAY: Yes.